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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,180	06/22/2001	Thomas Brinz	10191/1925	7242
26646	7590	08/17/2004	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			SNAY, JEFFREY R	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 08/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/887,180

Applicant(s)

BRINZ ET AL.

Examiner

Jeffrey R. Snay

Art Unit

1743

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.


NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-14.Claim(s) withdrawn from consideration: none.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Jeffrey R. Snay
Primary Examiner
Art Unit: 1743

Continuation of 5. does NOT place the application in condition for allowance because: applicant's arguments are unpersuasive. Applicant asserts that the device disclosed by Singh is differentiated from the instant invention because instant claim 1 requires that the particles form the sensitive layer. However, instant claim 1 recites a sensitive layer, wherein "the sensitive layer contains particles." As such, the only possible meaning of this language is that the particles, rather than forming the sensitive layer, in fact are contained by the sensitive layer. This interpretation is further required by the specification at, e.g., lines 7-8 of page 2, lines 31-32 of page 2, and lines 3-6 of page 3. Indeed, the specification at page 3, lines 1-8, clarify that the sensitive material is formed by an indicator, which indicator is immobilized within a polymer matrix. The particles recited in claim 1 as being contained by the sensitive layer are thus encapsulated by this sensitive matrix material (see Figure 1). Applicant's new assertion that the claimed particles form the sensitive layer cannot follow from the specification, nor from the plain language of the claim, which again recites that "the sensitive layer contains particles." This limitation is clearly met by Singh for the reasons of record in the last Office action. Applicant further asserts that Singh fails to disclose the support matrix (22) as being positioned on the element (12). However, the noted structural relationship is depicted in Figure 2 and required by at least claims 1 and 31. Applicant further argues that instant claim 12 requires that the detector is a part of the substrate. This reading cannot follow from the specification. Figure 1 shows a detector which is spaced apart from the substrate. Lines 26-27 of page 2 of the specification teach that the substrate is positioned between the detector and a radiation source. Lines 1-3 disclose an alternative embodiment in which no substrate is provided at all, the sensitive layer being applied directly to the detector. None of the specification refers in any way to an embodiment in which a detector is formed as a part of the substrate. Finally, applicant asserts that claim 14 defines over Singh because the sensitive material in Singh is water soluble. This argument fails to address either the rejection made nor the claim recited. Claim 14 requires the particles contained by the sensitive layer to be water insoluble. The particles of Singh, which are contained by the sensitive layer, are also water insoluble..